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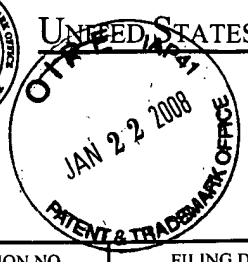

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,814	03/03/2004	Hua Zhang	88265-7697	1494

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BAXTER HEALTHCARE CORPORATION
1 BAXTER PARKWAY
DF2-2E
DEERFIELD, IL 60015

EXAMINER	
LEFF, STEVEN N	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
01/09/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,814	ZHANG ET AL.	
	Examiner	Art Unit	
	Steven Leff	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
    - The phrase "for promoting breakage" in claims 1 and 17 is rejected, as it is a relative phrase, which renders the claim indefinite. The term "for promoting breakage" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to what is encompassed by the phrase "for promoting breakage"; it is unclear as to what degree of difference is encompassed by this phrase, if not a "for promoting breakage". For instance the breakage may be promoted due to number of times of use, the material which the device is constructed of, a specific thickness, etc.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- Claim 1-20 remain rejected under 35 U.S.C. 102(e) as being anticipated by Zhang et al. (20030189042).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but

not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Zhang teaches a method for ensuring a more uniform heating of food by microwaves comprising: providing food in a portion having a predetermined size and shape; providing a container adapted for receiving and reheating the portion of food in a microwave oven (par. 0009). The container includes a supporting cavity consisting of peripheral sides and a bottom side, with the peripheral sides of the container being circumferentially shielded by a microwave reflective material such that the microwave reflective material on the peripheral sides forms a circumference having axial and transverse distances that are determined so as to change the wavelength of resonant modes in the supporting cavity (par. 0011). The microwave reflective material is configured as a band and a portion of food is placed in the supporting cavity (par. 0036). The band causes heating of the food and container with microwaves of changed wavelengths (par. 0036). These changed wavelengths of resonant modes in the cavity thereby resulting in a more uniform heating food pattern and a more uniform heating of the food. (par. 0039)

Zhang further teaches a method for quickly and evenly reheating food, in particular frozen food, with microwaves, in particular those provided by a conventional microwave oven that is 2450 MHz. (par. 0032).

"In order to promote domination of the desired TE modes, it has been found that the transverse distance T of the resonating band should be of 15 cm or less, preferably lower than 13 cm, even preferably ranging of from 6 to 12 cm. Similarly, the axial distance A of the band should be of 20 cm or less, preferably lower than 18 cm, even preferably ranging of from 6 to 15 cm." (par. 0040)

Zhang further teaches the uses of a food container assembly adapted for receiving and reheating of a food portion with microwaves, which comprises a food portion and a container forming a cavity consisting of peripheral sides and a bottom side for the portioned food to be placed within the cavity. The peripheral sides of the container are shielded by a microwave reflective material and the microwave reflective material of the peripheral sides defines a circumference having axial and transverse distances. These distances are determined so as to promote propagation of

certain resonant modes inside the cavity and in a food portion that is placed into the cavity. (Claim17)

Zhang et al. further teaches a heating attachment that sufficiently surrounds a container in operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom (par. 0055), where it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Zhang et al. teaches that the levers are pivoted (par. 0055 line 23) where promoting breakage of the heating attachment is accomplished when the levers are "pivoted" or broken away from the heating attachment. Therefore Zhang positively teaches that the heating attachment sufficiently surrounds a container "in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom to inhibit or prevent reuse of the heating attachment" where it is further noted that the pivoting of the levers "inhibit or prevent reuse of the heating attachment" until the levers are pivoted to engage the container prior to re-using the attachment.

Therefore with regard to claims 1-20 Zhang et al. teaches all of the limitations.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226

(Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 33 copending Application No. 10/955954 in view of Zhang et al. (20030189042). Although the conflicting claims are not identical, they are not patentably distinct from each other because although claim 1 of patent application 10/955954 does not recite a cradle configured for attaching the shield to the container in an operative association, Zhang et al. does teach a cradle configured for attaching the shield to the container in an operative association (fig. 5 and 6) thereby resulting in a more uniform heating food pattern and a more uniform heating of the food (par. 0039). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have taught a cradle configured for attaching the shield to the container in an operative association, as is taught by Zhang et al. (par. 0039) for its art recognized and applicant's intended purpose of providing a more uniform heating of the food (par. 0039). This is a provisional obviousness-type double patenting rejection.

Response to Arguments

- Applicant's arguments, filed 7/16/07, have been fully considered and are persuasive. The rejections with respect to De La Cruz, and McGeehins have been withdrawn.
- With respect to applicant's argument that "Zhang et al. fails to disclose or suggest a heating attachment that sufficiently surrounds a container in operative association to capture the container

for promoting breakage of the heating attachment when the container is removed therefrom", it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Zhang et al. teaches that the levers are pivoted (par. 0055 line 23) where promoting breakage of the heating attachment is accomplished when the levers are "pivoted" or broken away from the heating attachment, with repeated use, where the over-use of the device would "promote breakage" of the device thereby inhibiting further reuse of the device. Therefore Zhang et al. positively teaches that the heating attachment sufficiently surrounds a container "in an operative association in which the container is disposed in a heating space surrounded by the shield such that the shield improves the uniformity of microwave heating of a food product within the container, the heating attachment sufficiently surrounding the container in the operative association to capture the container for promoting breakage of the heating attachment when the container is removed therefrom to inhibit or prevent reuse of the heating attachment" where it is further noted that the pivoting of the levers "inhibit or prevent reuse of the heating attachment" until the levers are once again pivoted to engage the container prior to re-using the attachment. It is further noted that the term "for promoting" is not a positive recitation, where a structural description of how the heating attachment breaks would provide a structural difference which would thus "prevent reuse of the heating attachment." It is further noted that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), where a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art if the prior art structure is capable of performing the intended use, then it meets the claim. Lastly, it is noted that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached at (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SL

1/7/08

DREW BECKER
PRIMARY EXAMINER
1/7/08